

BEFORE THE PUBLIC SAFETY OFFICERS  
STANDARDS AND TRAINING COUNCIL  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 23.13.102, 23.13.206, ) PROPOSED AMENDMENT  
23.13.207, 23.13.208, 23.13.209, )  
23.13.210, 23.13.212, 23.13.215, )  
23.13.702, and 23.13.703 pertaining )  
to the certification of public safety )  
officers )

TO: All Concerned Persons

1. On December 18, 2019, at 10:00 a.m., the Public Safety Officers Standards and Training (POST) Council will hold a public hearing in Rooms 213 and 214 of the Karl Ohs Building of the Montana Law Enforcement Academy, 2260 Sierra Road East, at Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The POST Council will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the POST Council no later than 4:00 p.m. on December 11, 2019, to advise us of the nature of the accommodation that you need. Please contact Katrina Bolger, POST Council, 2260 Sierra Road East, Helena, Montana, 59602; telephone (406) 444-9974; or e-mail kbolger@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

23.13.102 DEFINITIONS As used in this chapter, the following definitions apply:

(1) through (5) remain the same.

(6) "Director" or "executive director" means the ~~executive director~~ bureau chief of the public safety officer standards and training ~~council~~ bureau.

(7) through (13) remain the same.

(14) "Misdemeanor probation/pretrial services officer" means a public safety officer who regularly performs the following functions as part of their work assignment:

(a) gathers information about pretrial defendants or misdemeanants through interviews and records checks;

(b) reports information regarding pretrial defendants or misdemeanants to a judge so the judge can determine the propriety of pretrial supervision, detainment, or sentence revocation;

(c) monitors pretrial defendants' or misdemeanants' compliance with court-ordered pretrial release or misdemeanor probation conditions;

(d) provides information and resources to pretrial defendants or misdemeanants to help prevent violations of court-ordered conditions; and  
(e) reports violations of court-ordered conditions to the court.  
(14) through (26) remain the same but are renumbered (15) through (27).

AUTH: 2-15-2029, MCA  
IMP: 2-15-2029, 44-4-403, MCA

REASON: The 2019 Legislature enacted HB 684, which created a Public Safety Officer Standards and Training Bureau under the Department of Justice and provided for a "bureau chief" rather than an "executive director." This amendment is necessary to reflect the statutory change.

On October 2, 2019, the POST Council created a new discipline, misdemeanor probation/pretrial services officer. This amendment is necessary to define the new discipline. Historically, the Department of Corrections provided a Probation and Parole basic training, which POST required misdemeanor probation and pretrial services officers to attend. The Department of Corrections recently informed POST that it will no longer provide this training to any non-Department of Corrections employees. POST therefore created this discipline to provide misdemeanor probation and pretrial services officers with training relevant to their duties.

23.13.206 REQUIREMENTS FOR THE BASIC CERTIFICATE (1) through (1)(c) remain the same.

(d) misdemeanor probation/pretrial services officer;

(d) through (f) remain the same but are renumbered (e) through (g).

(2) remains the same.

(3) An officer meeting the qualifications outlined above will be issued a basic POST certificate. The discipline of the basic POST certificate will correspond to the basic training course the officer attended. POST will consider the completion of the above requirements to constitute the officers application for a POST basic certificate. However, if an officer wishes to fill out an application form, then POST will also consider that application. POST will not reissue a basic certificate merely to change the discipline listed.

AUTH: 2-15-2029, MCA  
IMP: 2-15-2029, 44-4-403, MCA

REASON: On October 2, 2019, the POST Council created a new discipline, misdemeanor probation/pretrial services officer. The amendment to ARM 23.13.206(1)(d) is necessary to ensure that the existing requirements for the award of a basic certification apply to the new discipline.

In 2017, this rule was amended to identify the disciplines in which POST would issue a basic certificate. However, that amendment did not address how POST would handle certificates issued before 2017 that did not fall under one of the listed disciplines. Some officers have requested that POST reissue their certificates to

align with one of the listed disciplines, even though their basic training was not in the listed discipline. This amendment to ARM 23.13.206(3) is necessary to clarify that the discipline listed on a POST basic certificate corresponds to the basic training course the officer attended. This practice helps ensure that POST's internal tracking of trainings attended and certificates issued remains consistent. This amendment is also necessary in light of the creation of the new discipline, misdemeanor probation/pretrial services officer. The amendment notifies misdemeanor probation/pretrial services officers who attended a Probation and Parole basic training under the Department of Corrections that POST will not reissue their certificates merely to change the discipline from probation/parole officer to misdemeanor probation/pretrial services officer.

23.13.207 REQUIREMENTS FOR THE PUBLIC SAFETY OFFICER INTERMEDIATE CERTIFICATE (1) through (1)(c) remain the same.

(d) misdemeanor probation/pretrial services officer;

(d) remains the same but is renumbered (e).

(2) remains the same.

(3) In addition to ARM 23.13.204 and 23.13.205, a detention/corrections officer or a misdemeanor probation/pretrial services officer who is an applicant for an award of the intermediate certificate:

(a) through (5) remain the same.

(6) A misdemeanor probation/pretrial services officer who possessed a probation and parole basic certificate before [effective date of this rule] meets the requirement of (3)(b).

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 44-4-403, MCA

REASON: Before the POST Council created the misdemeanor probation/pretrial services officer discipline, POST required officers serving the function of a misdemeanor probation officer and/or a pretrial services officer to attend the Department of Corrections' Probation and Parole basic academy. Due to this practice, a number of officers who have been working in misdemeanor probation/pretrial services have Probation and Parole certifications. These amendments are necessary to allow these officers to qualify for the misdemeanor probation/pretrial services officer certification without attending a basic academy again.

23.13.208 REQUIREMENTS FOR PUBLIC SAFETY OFFICER ADVANCED CERTIFICATE (1) through (1)(b) remain the same.

(c) probation and parole officer; ~~and~~

(d) misdemeanor probation/pretrial services officer; and

(d) remains the same but is renumbered (e).

(2) remains the same.

(3) In addition to ARM 23.13.204 and 23.13.205, a detention/corrections officer or a misdemeanor probation/pretrial services officer who is an applicant for an award of the advanced certificate:

(a) through (5) remain the same.

(6) A misdemeanor probation/pretrial services officer who possessed a probation and parole intermediate certificate before [effective date of this rule] meets the requirement of (3)(a).

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 44-4-403, MCA

REASON: See the Reasons under ARM 23.13.207.

23.13.209 REQUIREMENTS FOR PUBLIC SAFETY OFFICER SUPERVISORY CERTIFICATE (1) through (1)(b) remain the same.

(c) probation and parole officer; and

(d) misdemeanor probation/pretrial services officer; and

(d) remains the same but is renumbered (e).

(2) through (4) remain the same.

(5) A misdemeanor probation/pretrial services officer who possessed a probation and parole intermediate certificate before [effective date of this rule] meets the requirement of (2)(a).

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 44-4-403, MCA

REASON: See the Reasons under ARM 23.13.207.

23.13.210 REQUIREMENTS FOR PUBLIC SAFETY OFFICER COMMAND CERTIFICATE (1) through (1)(b) remain the same.

(c) probation and parole officer; and

(d) misdemeanor probation/pretrial services officer; and

(d) remains the same but is renumbered (e).

(2) through (3) remain the same.

(4) A misdemeanor probation/pretrial services officer who possessed a probation and parole supervisory certificate before [effective date of this rule] meets the requirement of (2)(a).

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 44-4-403, MCA

REASON: See the Reasons under ARM 23.13.207.

23.13.212 INSTRUCTOR CERTIFICATION REQUIREMENTS (1) through (6) remain the same.

(7) A misdemeanor probation/pretrial services officer who possessed a probation and parole basic certificate before [effective date of this rule] meets the requirement of (3)(b).

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 44-4-403, MCA

REASON: See the Reasons under ARM 23.13.207.

23.13.215 FIREARMS PROFICIENCY STANDARDS (1) through (4) remain the same.

(5) Before carrying a firearm or making an arrest, a misdemeanor probation/pretrial services officer must successfully complete the firearms proficiency requirements provided in this rule. The officer must successfully complete the firearms proficiency requirements provided in this rule at least once a year.

AUTH: 2-15-2029, MCA

IMP: 7-32-303, 44-4-403, MCA

REASON: The 2019 Legislature amended 46-23-1005, MCA, to provide arrest authority to publicly employed misdemeanor probation officers. Similarly, 46-9-505, MCA, provides arrest authority for all pretrial services officers. On October 2, 2019, the POST Council created a new discipline, misdemeanor probation/pretrial services officer. This amendment is necessary to ensure that officers in the new discipline receive training before making arrests and carrying firearms. The council recognizes that many misdemeanor probation or pretrial services agencies are relatively new and small and do not have the resources to provide field training on arrest and use of force. This amendment ensures the safety of the misdemeanor probation/pretrial services officers and of the public by requiring all misdemeanor probation/pretrial services officers to be firearms proficient, without requiring the agencies to provide field training.

23.13.702 GROUNDS FOR DENIAL, SANCTION, SUSPENSION, OR REVOCATION OF POST CERTIFICATION (1) remains the same.

(2) The public safety officer's employing authority must report to the executive director any potential ground for denial, sanction, suspension, or revocation of POST certification as enumerated in (3).

(2) through (2)(d) remain the same but are renumbered (3) through (3)(d).

(e) conviction of a misdemeanor or felony, or an offense which would be a misdemeanor or felony if committed in this state;

(f) remains the same.

(g) neglect of duty or willful violation of orders or policies, procedures, rules, or regulations, or criminal law when such action or inaction, committed in the officer's capacity as an officer or otherwise, reflects adversely on the officer's honesty, integrity, or fitness as an officer or is prejudicial to the administration of justice;

(h) remains the same.

(i) other conduct or a pattern of conduct which tends to significantly undermine public confidence in the profession, whether committed in the officer's capacity as an officer or otherwise, is prejudicial to the administration of justice or reflects adversely on the employing authority's integrity or the officer's honesty, integrity, or fitness as an officer;

(j) and (k) remain the same.

~~(l) acts that are reasonably identified or regarded as so improper or inappropriate that by their nature and in their context are harmful to the employing authority's or officer's reputations, or to the public's confidence in the profession;~~

(m) through (o) remain the same but are renumbered (l) through (n).

(3) remains the same but is renumbered (4).

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 44-4-403, MCA

REASON: At a special council meeting in April 2019, employing authorities and public safety officers expressed concerns that the current grounds for denial, sanction, suspension, or revocation are vague and overbroad, for example because they would include an officer failing to refuel a vehicle at the end of a shift. The employing authorities also expressed ongoing confusion about what to send POST when reporting grounds for denial, sanction, suspension, or revocation. Some also expressed their belief that they are not required to report to POST at all. These amendments are necessary to clarify that an employing authority must report violations to the council and to clarify that only certain violations fall under the scope of the rule. These amendments are also necessary to ensure consistency with the public safety officers' Code of Ethics set forth in ARM 23.13.203.

23.13.703 PROCEDURE FOR MAKING AND RECEIVING ALLEGATIONS OF OFFICER MISCONDUCT AND FOR INFORMAL RESOLUTION OF THOSE ALLEGATIONS BY THE DIRECTOR (1) through (3) remain the same.

(4) Within 30 days of being notified of the allegation, or in making its own allegation of misconduct, the employing authority must give POST a notice of the employing authority's investigation, action, ruling, finding, or response to the allegation, in writing, which must include a description of any remedial or disciplinary action pending or already taken against the officer regarding the allegation in question, and a recommendation from the employing authority regarding whether POST should impose a sanction. If the employing authority recommends POST impose a sanction, the employing authority must state what sanction the employing authority deems reasonable. POST shall consider but is not bound by the recommendation of the employing authority. If available, a copy of the initial allegation made to the employing authority and the employing authority's written response must be forwarded to the director. The employing authority may make a written request to the director for additional time to respond. Such a request must provide good cause as to the reason more time is required. The director may grant or deny requests for additional time at ~~his~~ the director's discretion.

(5) through (5)(b)(iii) remain the same.

~~(iv) the remedy sought, including a recommendation for a denial, sanction, suspension, or revocation of the officer's POST certification;~~

(c) through (11) remain the same.

AUTH: ~~2-4-201~~, 2-15-2029, MCA

IMP: ~~2-4-201~~, 2-15-2029, 44-4-403, MCA

REASON: At a special council meeting in April 2019, employing authorities indicated that they do not make recommendations regarding sanctions because they do not believe POST would consider such recommendations. These amendments are necessary to clarify that POST will in fact consider recommendations.

In May 2019, officers expressed concern that complainants may recommend sanctions when some lesser action may be acceptable. The amendments are also necessary to allow complainants to recommend something other than a sanction, such as an apology or an investigation.

As part of the periodic review of its administrative rules, POST is proposing to substitute gender neutral terms for gender specific language. POST has determined that reasonable necessity exists to amend ARM 23.13.703(4) at this time.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Katrina Bolger, POST Council, 2260 Sierra Road East, Helena, Montana, 59602; telephone (406) 444-9974; or e-mail [kbolger@mt.gov](mailto:kbolger@mt.gov), and must be received no later than 5:00 p.m., January 3, 2020.

5. Kristina Neal, Attorney at Law, has been designated to preside over and conduct this hearing.

6. The council maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

8. With regard to the requirements of 2-4-111, MCA, the council has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Hannah Tokerud  
Hannah Tokerud  
Rule Reviewer

Sheriff Tony Harbaugh  
Chairman  
Public Safety Officers Standards  
and Training Council

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By: /s/ Perry Johnson  
Perry Johnson  
Executive Director

Certified to the Secretary of State October 29, 2019.